83-2120

No.

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ALEXANDER L. STEVAS,
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IN THE SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1983

ROBERT L. EVANS,

PETITIONER,

v.

LOCKHEED-GEORGIA COMPANY,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

ROBERT L. EVANS, PRO SE
1922 Turner Road, S.E.
Atlanta, Georgia 30315
(404) 627-8798
Petitioner

68pp

QUESTIONS PRESENTED

1. Whether the District Court has power to amend its judgment after ten days?

2. Whether the Court can amend its findings of fact and conclusions of law after the expiration of ten days?

3. Whether the District Court has jurisdiction over a case once notice of appeal has been filed?

4. Whether the Court misused its discretion and failed to perform its duty in directing counselors to draft the findings of fact and conclusions of law?

5. Whether certiorari should be granted to resolve the conflict between all other Courts of Appeal and the anomalous Eleventh Circuit rule, which is the subject of great confusion even among different panels of the Eleventh

QUESTIONS PRESENTED

Circuit*, and which has resulted in extensive and unnecessary litigation in that court?

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*Previously the Fifth Circuit.

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No.

IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1983.

ROBERT L. EVANS, PRO SE

PETITIONER,

v.

LOCKHEED-GEORGIA COMPANY,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

The petitioner, Robert L. Evans, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for

the Eleventh Circuit entered on December 7, 1983.

The Court of Appeals entered its Memorandum decision affirming the District Court Judgment.[1/] A copy of the Memorandum is attached as Appendix A.

The Court denied petitioner's petition for rehearing and suggestion for rehearing en banc on January 31, 1984. A copy of the Order is attached as Appendix B.

PARTIES IN THE COURT OF APPEALS

The parties to the proceeding in the Court below are those named in the caption of the case in this court.

OPINION BELOW

The opinion of the court below was unpublished. Said opinion is attached as Appendix A.

1/Except for taxation of cost, which was vacated and remanded.

JURISDICTION

On January 31, 1983 the Court of Appeals entered judgment affirming the District Court's judgment. (App. A) This Petition for Certiorari is filed within 90 days of denial of Plaintiff/ Petitioner's petition for rehearing. The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254(1).

STATUTORY PROVISION INVOLVED

1. 42 U.S.C.A. §2000e, et seq., which provides in relevant part:

> It shall be an unlawful employment practice for an employer--(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.....

2. 42 U.S.C.A. §1981, which provides:

> All persons within the jurisdiction of the United States shall have the same right in every State and territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

3. 29 U.S.C.A. §621, et seq., which provides in relevant part:

> It is therefore the purpose of this chapter to proximate employment of older persons based on their ability rather than age, to prohibit arbitrary age discrimination in employment.....

4. United States Constitution, Amendments V and XIV:

> Nor shall any person...be deprived of life, liberty, or property, without due process of law....

STATEMENT OF THE CASE

On January 31, 1984 a panel of the Eleventh Circuit Court of Appeals af-

firmed the judgment of the District Court[2/], that Defendant-Respondent did not discriminate against Plaintiff-Petitioner in a promotional procedure under 29 U.S.C.A. §621 et seq., and 42 U.S.C.A. §§1981, 2000e (Title VII), Robert L. Evans v. Lockheed-Georgia Company, Civil Action No. 83-8250 (not published). A timely petition for rehearing pursuant to Rule 35(d) and 40 of the Federal Rules of Appellate Procedure was filed on December 27, 1983, and the petition was denied on January 31, 1984 by the Eleventh Circuit.

2/Except as to the Clerk's taxation of costs to the extent that attorneys' fees were included which was ordered vacated and remanded for a determination by the District Court of whether defendant was entitled to attorneys' fees.

On March 4, 1983 a jury returned a verdict in favor of the Defendant in reply to two special interrogatories on petitioner's 29 U.S.C.A. §621 et seq. and 42 U.S.C.A. §1981 claims. (T-343)

The verdict was signed on March 7, 1983, granting Defendant cost of action. (R-292). The judgment of March 7, 1983 did not contain a decision on Petitioner's 42 U.S.C.A. §2000e claims, nor were there findings of fact and conclusions of law to support the jury verdict under 29 U.S.C.A. 621 et seq, and 42 U.S.C.A. §1981. (App. C)

On April 4, 1983, Petitioner filed his notice of appeal with the United States District Court for the Northern District, Atlanta (R-299).

On April 22, 1983, Respondent by letter brief moved the District Court to amend its judgment to include Respondent's recommended findings of fact and

conclusions of law, (R-305,330), forty-five days after the judgment was entered and eighteen days after notice of appeal had been filed.

On May 6, 1983, Petitioner objected to the Court's jurisdiction over the case, power to amend its judgment and usage of opposing counselor's findings of fact and conclusions of law. (R-338). On May 10, 1983, sixty-three days after the judgment was entered, and thirty-four days after notice of appeal had been filed, the District Court amended its judgment to include the identical findings of fact and conclusions of law submitted by Respondent on April 22, 1983. This judgment was entered nunc pro tunc which included a decision on Petitioner's Title VII claim (App. D).

On May 25, 1983 Petitioner filed his objection to the amended judgment and moved the Court to vacate its judgment,

(R-338) which was denied on June 17, 1983, including Petitioner's objection to the Court's jurisdiction and adoption of opposing counselor's findings of fact and conclusions of law. (Supp. T-39-45).

On July 18, 1983 petitioner filed his appeal brief[3/]. On July 25, 1983 the

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3/Errors plaintiff alleged committed by the trial court on appeal: (1) failure to make findings of fact and conclusions of law at the time judgment was entered; (2) amendment of judgment after expiration of time limit for such amendment by adding findings of fact and conclusions of law; (3) amendment of findings of fact and conclusions of law after expiration of time limit for such amendment; (4) amendment of judgment after the filing of notice of appeal; (5) adoption of the findings of fact and conclusions of law; (6) adoption of erroneous findings of fact and conclusions of law submitted by defense counsel; (7) failure to rule on a discovery motion submitted by defendant; (8) failure to rule on defendant's illegal employment practices; (9) acceptance of verdict which the evidence was not sufficient to support; (10) admission of testimony of the beneficiary of the discriminatory act regarding plaintiff's past conduct; (11) award of attorney's fees to the defendant.

District Court again amended its judgment to include additional findings of fact and conclusions of law that were verbatim to those submitted by counselor on July 6, 1983.

The Appeals Court affirmed the District Court's authority to amend its judgment to enter finding after expiration of 10 days, and jurisdiction over a case after notice of appeal had been filed.

The court stated:

> In a trial without a jury, the judge, as the trier of fact, must make findings of fact and conclusions of law, see Fed. R. Civ. P. 52(a). Generally, this must be done before the judgment is appealed. In this case, however, the trial court's failure to enter these findings and conclusions prior to judgment or before the filing of a notice of appeal, while irregular, was harmless. The record and briefs show that the trial court's conclusions are correct, and that its findings are adequately supported by the record. The determinations are consistent with the jury's finding that plaintiff was not intentionally denied promotion because of his

> race. As the district judge correctly recognized, the interests of judicial economy are served by his issuance of findings and conclusions reflecting the grounds for his decision prior to our review of this matter.

REASON FOR GRANTING THE WRIT

In this case, for the first time a judgment amended more than sixty days after time for amendment has expired is being sustained on appeal solely on the basis of judicial economy.

The time limit of Federal Rules of Civil Procedure 52(b)[4/] and 59(e)[5/]

4/Rule 52(b) states upon a motion made not later than 10 days the Court may amend its findings after entry of judgment.

5/Rule 59(e) states that a motion to alter or amend the judgment shall be served not later than 10 days after entry of judgment.

are statutory limitations.[6/] The District Court on May 10, 1983 lacked power and jurisdiction to amend its judgment and alter the findings of fact and conclusions of law.[7/] Cases submitted to the jury under Rule 49 require written findings upon each issue of fact. Banerjee v. Trustees of Smith College, 648 F.2d 61. The court cannot render a

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6/Motion to amend to make additional findings and to amend judgment must be made not later than 10 days after entry of judgment. Turner v. Ohman House Corp., C.A. Tenn. 1967, 376 F.2d 347.

7/Time limit dictated by this rule governing motions to amend judgment is mandatory and may not be extended by trial court. Cole v. Altieri, D.C. Pa. 1981, 534 F.Supp. 165. The ten-day time limitation fixed by this judgment is one of the few limiting periods which the court has no power to enlarge Scola v. Boat Frances, R., Inc., C.A. Mass. 1980, 618 F.2d 147.

verdict without a finding of facts on all of Petitioner's claims. See Prang Trucking Co. Inc. v. Local Union #469, 613 F.2d 1235; Swanson v. Levy, 509 F.2d 859; Gulf Towing Co. Inc. v. Stream Tanker, 648 F.2d 242.

Because this case is subject to pivot on the credibility of witnesses, the Court must comply with the time limitation for entering findings of fact. Petitioner finds it difficult, if not impossible, for the Court to make meticulous findings two (2) months after the trial date. U.S. v. Aluminum, 322 U.S. 716; Deutsch v. Hoge, 185 F.2d 259; U.S. v. Deapulse Corp., 457 F.2d 25; Continental Connector Corp. v. Houston Fearless Corp., 350 F.2d 183.

I.

The District Court does not have power to amend its judgment after ten days.

In Hudson v. Atchison, this Court established that neither the trial judge nor the appellate court can amend a judgment not made within ten days after reception of verdict. 82 S.Ct. 61; 289 F.2d 726; 368 U.S. 835.

This Court recently upheld Federal Rule of Civil Procedure 59(e) in Cole v. Attieri, D.C. Pa. 1984, 534 F.Supp. 165; Scola v. Boat Frances, R. Inc., C.A. Mass. 1980, 618 F.2d 147.

The Appeal Court affirming the District Court action in amending its judgment after ten days on two separate occasions is in conflict with this Court and between the circuits. This conflict requires resolution by this Court.

II.

The Court cannot amend its findings of fact and conclusions of law after expiration of 10 days after the verdict.

In Russell v. Monongabela Railway Co., this court established the rule that all motions for amendments, whether by counselors or the court, must be filed within 10 days after the verdict. 262 F.2d 349.[8/]

The Eleventh Circuit affirmed the Respondent's letter motion of 22 April to amend the findings and the court amended judgment of 10 May, 1983.

III.

The District Court does not have jurisdiction over a case once it has been docketed in the Appeal Court. All action

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8/ This rule was affirmed by this Court and Circuit Courts of Appeal in the following cases: Francis v. Southern Pacific Co., 10 Cir., 1947, 162 F.2d 813, affirmed, 1948, 333 U.S. 445, 68 S.Ct. 611, 92 L.Ed. 798; Cheffey v. Pennsylvania R.R. Co., D.C.E.D. Pa. 1948, 79 F.Supp. 252; McHugh v. Audet, D.C.M.D.Pa. 1947, 72 F.Supp. 394.

by the District Court after April 4, 1983 must be vacated.

The Eleventh Circuit appeal panel agreed with Petitioner that the findings of fact and conclusions of law must be entered before the judgment is appealed.

However, the panel termed this error of law in this case as irregular and harmless and in the interest of judicial economy. (App. A., p.3).

With the Appeal Court affirming the power of the District Court to proceed with amending its judgment to include findings after notice of appeal had been filed is an error of law which disregarded F.R.C.P. 52, 59 and 15.

In Browder v. Director Ill. Dept. of Corrections (1978) this Court ruled that:

> "When a petitioner has not sought any relief from the judgment entered...herein under the provisions of Rule 52(b) or Rule 59(a), (b), (e), Federal Rules of Civil Procedure, and the time for seeking the same has expired so as to render

this Court powerless to grant any such relief." 434 U.S. 257, 262, 98 S.Ct. 556."

The uncertainty created by the Court's failure to comply with the F.R.C.P. requires resolution by this Court.

IV.

The District Court abused its powers in (1) directing counselors to draft the findings of fact and conclusions of law, (2) adopting the findings of the successful party. These procedures should have been vacated by the Appeal Court.

In U.S. v. Crescent Amusement Co., this Court ruled that the findings should represent the Judge's own determination, and not the statement of the successful counsel. [323 U.S. 173, See U.S. v. Fornes, 125 F.2d 928; Armstar Corp. v. Domino's Pizza, Inc., 615 F.2d 252] ensuring the standard of review for the Appeal Court.

Failure of the District Court to make independent findings void Petitioner the right of due process on the appeal level.

A case on point is Perry v. Baumonn, 122 F.2d 409, where the court stated that where district court made no findings of fact and stated no conclusions of law, order would be reversed and case remanded to district court.

This conflict between the circuits and the uncertainty created by the Eleventh Circuit panel opinion requires resolution by this Court.

V.

Federal Rules of Civil Procedure 52 and 59 are applied inconsistently by the Eleventh Circuit and other Appeals Courts.

Petitioner's argument regarding findings of fact are identical to those discussed in Beshop v. Lane, supra, wherein the court stated:

> The court's memorandum of Findings of Fact and Conclusions of Law was copied almost verbatim from proposed Findings of Fact and Conclusions of Law submitted by plaintiff's counsel. While the practice of allowing counsel for the prevailing party to write the trial judge's opinion has not been proscribed by this circuit, it should nevertheless be discouraged. Even though the court, in adopting plaintiff's findings and conclusions, stated that it had "individually considered" them and adopted them because it "believed them to be factually and legally correct," a cursory reading of the district court's memorandum leaves one with the impression that it was indeed written by the prevailing party to a bitter dispute. While the "clearly erroneous" rule of Fed.R.Civ.P. 52(a) applies to a trial judge's findings of fact whether he prepared them or they were developed by one of the parties and mechanically adopted by the judge, "we can take into account the District Court's lack of personal attention to factual findings in applying the clearly erroneous rule." Wilson v. Thompson, 593 F.2d 1375, 1384 n.16 (5th Cir. 1979). See also James v. Stockham Valves & Fittings Co., 559 F.2d 310, 314 n.1

(5th Cir. 1977); Volkswagen of America, Inc. v. Jahre, 472 F.2d 557, 559 (5th Cir. 1973). As was stated in James:

> "[T]he appellate court can feel slightly more confident in concluding that important evidence has been overlooked or inadequately considered" when factual findings were not the product of personal analysis and determination by the trial judge. 559 F.2d at 314 n.1, quoting Lou Dreyfus & Cie. v. Panama Canal Co., 29 F.2d 733, 738 (5th Cir. 1962).

A finding of fact is clearly erroneous "when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." United States v. United States Gypsum Co., 333 U.S. 364, 395, 68 S.Ct. 525, 92 L.Ed. 746 (1948). "In other words, we reverse when the result in a particular case does not reflect the truth and the right of the case." Armstrong Cork Co. v. Wor Carpets, Inc., 597 F.2d 496, 501 (5th Cir. 1979). Such is the case here.

It is the court's duty to set forth preliminary and basic facts rather than statements that are conclusive in nature. Ruiz v. Estelle, 679 F.2d 1115 (1982);

Griggs v. Provident, 680 F.2d 927 (1982). Failure to comply is reversible error. U.S. v. Rohnn, 95 S.Ct. 1352, 400 U.S. 962 (1974); Bio-Medicus Inc. v. Shareholders, Inc., 608 F.2d 1155 (1979); U.S. v. Aluminum, supra; Clamitz v. Thatcher, 158 F.2d 687, 331 U.S. 825.

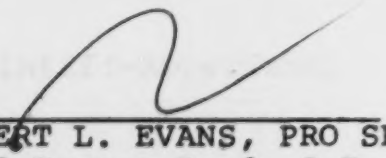
CONCLUSION

The essential question of this petition is whether the District Court can totally disregard Federal Rules of Civil Procedure and decisions affirmed by this Court. A district court cannot disregard a federal rule. U.S. v. Aluminum Co., 2 FRD 244. Petitioner contends that the Court was prohibited by law from amending its judgment after expiration of ten days.

For the foregoing reasons, Petitioner Robert L. Evans respectfully requests that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

DATED: _____ June, 1984.

Respectfully submitted,



ROBERT L. EVANS, PRO SE
1922 Turner Road, S.E.
Atlanta, Georgia 30315

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

NO. 83-8250

Non-Argument Calendar

ROBERT L. EVANS,

Plaintiff-Appellant,

versus

LOCKHEED-GEORGIA COMPANY,

Defendant-Appellee.

Appeal from the United States District Court

For The Northern District of Georgia

(December 7, 1983)

Before GODBOLD, Chief Judge, RONEY and TJOFLAT, Circuit Judges.

PER CURIAM.

Robert L. Evans here appeals the district court's denial of relief for his race and age discrimination claims against his employer, Lockheed-Georgia Company, under 29 U.S.C.A. § 621, et seq., and 42 U.S.C.A. § 1981 and § 2000e (Title VII). Plaintiff asserts eleven "errors" committed by the trial court including an objection to the award of attorney's fees to defendant.[1] We affirm on all issues except the award of attorney's fees, which we vacate and remand for consideration by the district court under the Christianburg standard.

Six of plaintiff's claims on appeal concern the district court's issuance of findings of fact and conclusions of law pertaining to plaintiff's Title VII race discrimination claims. At trial, the jury verdict answering special interrogatories in favor of defendant was determinative of plaintiff's claims under 29 U.S.C.A. § 621 et seq. (age discrimination), and 42 U.S.C.A. § 1981 (racial discrimination), but was only advisory with respect to the Title VII questions. Based on the verdict which, contrary to plaintiff's argument, was amply supported by the evidence, the court entered judgment for the defendant on all claims on March 7, 1983. On April 4, 1983, plaintiff filed his notice of appeal. On May 10, 1983, the district court entered findings of fact and conclusions of law

relating to plaintiff's Title VII claims. These determinations were reconsidered and modified by the district court following a hearing conducted on June 16-17, 1983, at which plaintiff was afforded an opportunity to register objections and recommend changes.

In a trial without a jury, the judge, as the trier of fact, must make findings of fact and conclusions of law, see Fed. R. Civ. P. 52(a). Generally, this must be done before the judgment is appealed. In this case, however, the trial court's failure to enter these findings and conclusions prior to judgment or before the filing of a notice of appeal, while irregular, was harmless. The record and briefs shows that the trial court's conclusions are

correct, and that its findings are consistent with the jury's finding that plaintiff was not intentionally denied promotion because of his race. As the district judge correctly recognized, the interests of judicial economy are served by his issuance of findings and conclusions reflecting the grounds for his decision prior to our review of this matter.

Plaintiff's remaining assertions of error in the judgment are without merit. There was no reversible error in failing to specifically rule on defendant's motion to exclude its affirmative action plan from evidence, or to rule on plaintiff's claim that the defendant systematically discriminated on the basis of race. The district court's judgement

resolved all of plaintiff's claims. Admission of Mr. Dorsey's testimony was appropriate. Plaintiff had ample opportunity to establish on cross-examination that this witness was promoted to the position desired by plaintiff.

The trial court did not mention attorney's fees in its order but directed that all costs be taxed against the plaintiff. Plaintiff failed to object until April 20 to the inclusion of attorney's fees in the bill of costs submitted by defendant and taxed by the clerk on April 7. Ordinarily, such objections are waived unless raised within five days of the taxing of costs, see Fed. R. Civ. P. 54(d), although a court may, in its discretion, consider objections filed later, see Fed. R. Civ. P. 6; United States v. Kolesar, 313 F.2d 835 (5th Cir. 1963).

In actions under Title VII and 42 U.S.C.A. §1988, however, a defendant cannot get attorney's fees against a plaintiff until the court has first found the plaintiff's claims frivolous, unreasonable, groundless, or prosecuted in bad faith. Christianburg Garment Co. v. EEOC, 434 U.S. 412, 422 (1978) (such a finding required in Title VII actions); Lopez v. Aransas County Independent School District, 570 F.2d 541 (5th Cir. 1978) (Christianburg standard applied in §1988 action). In this case, no such finding was made. Defendant did not file a motion for allowance of attorney's fees until May 9, after they had been taxed as costs by the clerk. The trial court has not responded to that motion or to plaintiff's objection to the erroneous

inclusion of such fees by the clerk. Accordingly, we vacate the clerk's taxing of costs to the extent that attorney's fees were included, and remand for a determination by the district court of whether defendant is entitled to attorney's fees under the Christianburg standard.

We cannot hold that plaintiff acted friviously, unreasonably or in bad faith in pursuing this appeal. Defendant's request for attorney's fees on this appeal is therefore DENIED. Costs of this appeal shall be evenly divided between the parties.

AFFIRMED IN PART, VACATED IN PART AND REMANDED.

---

1. (1) failure to make findings of fact and conclusions of law at the

time judgment was entered; (2) amendment of judgment after expiration of time limit for such amendment by adding findings of fact and conclusions of law; (3) amendment of findings of fact and conclusions of law after expiration of time limit for such amendment; (4) amendment of judgment after the filing of notice of appeal; (5) adoption of erroneous findings of fact and conclusions of law; (6) adoption of the findings of fact and conclusions of law submitted by defense counsel; (7) failure to rule on a discovery motion submitted by the defendant; (8) failure to rule on defendant's illegal employment practices; (9) acceptance of verdict which the evidence was not sufficient to support; (10) admission of testimony of the beneficiary of the discriminatory act regarding plaintiff's past conduct; (11) award of attorney's fees to the defendant.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 83-8250

ROBERT L. EVANS,

Plaintiff-Appellant,

versus

LOCKHEED-GEORGIA COMPANY,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Georgia

---

ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

(Opinion December 7, 1983, 11 Cir., 198__, _____ F.2d _____).

Before GODBOLD, Chief Judge, RONEY and TJOFLAT, Circuit Judges.

PER CURIAM:

(x) The Petition for Rehearing is DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 26), the Suggestion for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ Paul H. Roney
United States Circuit Judge

APPENDIX C

JUDGMENT IN A CIVIL CASE

UNITED STATES DISTRICT COURT

District: Northern District of Georgia
Docket Number: C 82-657 A

TITLE:

Robert L. Evans

v.

Lockheed Georgia Company

JUDGE: Charles A. Moye, Jr.

x Jury Verdict. This action came before the Court and a jury with the judicial officer named above presiding. The issues have been tried and the jury has rendered its verdict.

x Decision by Court. This action came to trial or hearing before the Court with the judge (magistrate) named above presiding. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

That the plaintiff take nothing, that the action be dismissed on the merits and that the defendant LOCKHEED GEORGIA COMPANY recover of the plaintiff ROBERT L. EVANS its costs of action.

By Clerk:

/s/ Gary J. Drake Date: 3/7/83

APPENDIX D

AMENDED JUDGMENT

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ROBERT L. EVANS	:	
	:	
vs.	:	CIVIL ACTION
	:	DOCKET NO. C82-
LOCKHEED-GEORGIA	:	657A
	:	

This action came on for consideration before the Court, United States District Judge Charles A. Moye, Jr. presiding. The issues having been duly considered and a decision having been duly rendered, it is ordered and adjudged finding in favor of the Defendant and against the plaintiff, that the plaintiff, ROBERT L. EVANS, take nothing on his claims under Title VII of the Civil Rights Act of 1964, nunc pro tunc, with all costs taxed against the plaintiff, ROBERT L. EVANS, and that the Defendant, LOCKHEED-GEORGIA COMPANY recover of the

Plaintiff ROBERT L. EVANS, all costs of this action.

Filed and Entered in Clerk's Office
nunc pro tunc.

May 10, 1983

BEN H. CARTER, Clerk

By: /s/ Allen Newman
Allen Newman,
Deputy Clerk

Dated at: Atlanta, Georgia

Date: March 7, 1983

/s/ Allen Newman
Allen Newman, Deputy Clerk of Court

No.

IN THE SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1983

ROBERT L. EVANS,

PETITIONER,

v.

LOCKHEED-GEORGIA COMPANY,

RESPONDENT.

PROOF OF SERVICE

STATE OF GEORGIA)
)
COUNTY OF FULTON)

ROBERT L. EVANS, after being duly sworn, deposes and says that pursuant to Rule 28.4(a) of this Court he served the Petition for Writ of Certiorari to the Court of Appeals for the Eleventh Circuit

on counsel for the Respondent by enclosing a copy thereof in an envelope, first class postage prepaid, addressed to:

Mr. Richard Rice
Ms. Susan A. Cahoon
Mr. Edmund M. Kneisel
KILPATRICK & CODY
3100 Equitable Building
100 Peachtree Street
Atlanta, Georgia 30043

Mr. Robert P. Barton
Legal Department
LOCKHEED GEORGIA COMPANY
86 South Cobb Drive
Marietta, Georgia 30063

and depositing same in the United States Mail at Atlanta, Georgia on ____ day of _____, 1984.

_____
Robert L. Evans, Affiant

Subscribed and Sworn to
Before Me this ____ day
of _____, 1984.

_____
Notary Public